Filed 7/12/19 P. v. Crockett CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE, Plaintiff and Respondent, v. LEON WILSON CROCKETT, Defendant and Appellant.	C087723 (Super. Ct. No. 08F6372)

Appointed counsel for defendant Leon Wilson Crockett has filed an opening brief setting forth the facts of the case and asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Finding no arguable error that would result in a disposition more favorable to defendant, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2008 officers responded to a domestic disturbance call involving defendant and his girlfriend. The couple had been visiting friends and drinking; at some point they

began to argue. Defendant grabbed his girlfriend, forcibly removed her from the residence, and dragged her approximately 100 yards. She sustained "an abrasion to her lower right leg" and a sore head.

A jury found defendant guilty of corporal injury to a cohabitant (Pen. Code, § 273.5, subd. (b)),[1] false imprisonment by violence (§ 237, subd. (a)), and assault with force likely to cause great bodily injury (§ 245, subd. (a)(1)). We affirmed the judgment in an unpublished opinion in May 2010. (*People v. Crockett* (May 6, 2010, C061217) [nonpub. opn.].)

Following the enactment of Proposition 36, the Three Strikes Reform Act, defendant petitioned for resentencing under section 1170.126. The trial court denied the petition and we affirmed the denial in a published decision, *People v. Crockett* (2015) 234 Cal.App.4th 642. The California Supreme Court granted review and later dismissed review and remanded. (*Id.*, review granted, May 13, 2015, S225198, review dismissed and remanded Nov. 29, 2017.)

On June 22, 2018, defendant filed a second section 1170.126 petition. The trial court denied the petition, finding that defendant was attempting to relitigate the same issue. Defendant appealed.

DISCUSSION

Counsel filed an opening brief setting forth the facts of the case and requesting that this court review the record to determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a supplemental brief raising several issues. He appears to argue that Propositions 36, 47, and 57 mandate that his petition for resentencing be granted. He

---

[1] Further undesignated statutory references are to the Penal Code.

also references section 1170, subdivision (d)(1), and casts doubt on the sufficiency of the evidence supporting his corporal injury conviction.

Proposition 47, the Safe Neighborhoods and Schools Act, "reclassified as misdemeanors certain drug-and theft-related offenses that previously were felonies or wobblers." (*People v. Valencia* (2017) 3 Cal.5th 347, 355 (*Valencia*); § 1170.18, subds. (a), (b).) "Proposition 47 also added a provision allowing felony offenders 'serving a sentence for a conviction' for offenses now reclassified as misdemeanors to petition to have their sentences recalled and to be resentenced" if they met certain criteria, ' "unless the court, in its discretion, determined that resentencing the petitioner would pose an unreasonable risk of danger to public safety.' " (*Valencia*, at p. 355; § 1170.18, subd. (a), (b).)

Proposition 47 limits the trial court's discretion to deny resentencing by defining the phrase " 'unreasonable risk of danger to public safety' " narrowly. (*Valencia*, *supra*, 3 Cal.5th at pp. 355-356.) Under Proposition 47, that phrase means an unreasonable risk that the petitioner will commit a " 'super strike.' " (*Ibid.*) The Supreme Court held in *Valencia*, however, that Proposition 47's narrow definition of " "unreasonable risk of danger to public safety' " did not apply to Proposition 36 petitions for resentencing. (*Id.* at p. 375.)

In this case, defendant was not convicted of any drug or theft related offenses. Proposition 47 does not apply to his domestic violence case. (See *Valencia, supra,* 3 Cal.5th 360 [Proposition 47 "did not purport to alter the sentences for felonies other than those that the measure reduced to misdemeanors"].) And, contrary to defendant's argument, *Valencia* makes clear that Proposition 47's narrow definition of unreasonable risk of danger to public safety does not apply to Proposition 36--the basis of defendant's petition for resentencing. (*Id.* at p. 375.)

Defendant's reliance on Proposition 57 is likewise misplaced. The electorate passed Proposition 57, dubbed the Public Safety and Rehabilitation Act in November

2016. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 304; *In re Edwards* (2018) 26 Cal.App.5th 1181, 1185.) The act added a provision to California's Constitution that reads: "Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense." (Cal. Const., art. I, § 32, subd. (a)(1).) The newly added constitutional provision defines "the full term for the primary offense" as "the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence." (*Id.*, art. I, § 32, subd. (a)(1)(A).)

While Proposition 57 established a new rule that "all nonviolent state prisoners are eligible for parole consideration, and they are eligible when they complete the full term for their primary offense" (*In re Edwards, supra*, 26 Cal.App.5th at p. 1186), the plain language of section 32, subdivision (a)(1) does not apply to defendant's petition for resentencing under section 1170.126. Proposition 57 simply deals with parole consideration, not resentencing on any underlying convictions.

Defendant also cites section 1170, subdivision (d)(1), but fails to explain how the statute applies to him. This statute permits a trial court to recall and modify a defendant's sentence on its own motion within 120 days of imposing the sentence. (§ 1170, subd. (d)(1).) Because defendant was originally sentenced in 2009, clearly 120 days have elapsed since the original sentencing and the court could not utilize section 1170, subdivision (d)(1).

Finally, to the extent defendant challenges the sufficiency of the evidence supporting his corporal injury conviction, we have already rejected this argument. (*People v. Crockett, supra*, C061217, at p. *2.) Defendant cannot raise again in this collateral attack on his sentence the same claim previously raised and rejected in his direct appeal. (Cf. *In re Reno* (2012) 55 Cal.4th 428,479-480 [claims previously raised and rejected on direct appeal could not be re-raised in writ of habeas corpus].)

The trial court did not err in denying defendant's petition for resentencing under section 1170.126.

DISPOSITION

The judgment is affirmed.

/s/
Duarte, J.

We concur:

/s/
Robie, Acting P. J.

/s/
Renner, J.